

Powell District Ranger decisions:
The Daily Spectrum, St. George, Utah
 Escalante District Ranger Decisions:
The Daily Spectrum, St. George, Utah
 Teasdale District Ranger decisions:
The Daily Spectrum, St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions:
Richfield Reaper, Richfield, Utah
 Loa District Ranger decisions:
Richfield Reaper, Richfield, Utah
 Richfield District Ranger decisions:
Richfield Reaper, Richfield, Utah
 Beaver District Ranger decisions:
Richfield Reaper, Beaver, Utah
 Fillmore District Ranger decisions:
Richfield Reaper, Fillmore, Utah

Humboldt National Forest

Humboldt Forest Supervisor decisions:
Elko Daily Free Press, Elko, Nevada
 Mountain City District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
 Jarbidge and Ruby Mountain District Ranger decisions:
Elko Daily Free Press, Elko, Nevada
 Ely District Ranger decisions:
Ely Daily Times, Ely, Nevada
 Santa Rosa District Ranger decisions:
Humboldt Sun, Winnemucca, Nevada
 Jarbidge District Ranger decisions:
Twin Fall Times News, Twin Falls, Idaho

Manti-Lasal National Forest

Manti-Lasal Forest Supervisor decisions:
Sun Advocate, Price, Utah
 Sanpete District Ranger decisions:
The Pyramid, Mt. Pleasant, Utah
 Ferron District Ranger decisions:
Emery County Progress, Castle Dale, Utah
 Price District Ranger decisions:
Sun Advocate, Price, Utah
 Moab District Ranger decisions:
The Times Independent, Moab, Utah
 Monticello District Ranger decisions:
The San Juan Record, Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions:
Idaho Statesman, Boise, Idaho
 Weiser District Ranger decisions:
Signal American, Weiser, Idaho
 Council District Ranger decisions:
Council Record, Council, Idaho
 New Meadows, McCall, and Krassel District Ranger decisions:
Star News, McCall, Idaho

Salmon National Forest

Salmon Forest Supervisor decisions:
The Recorder-Herald, Salmon, Idaho
 Cobalt District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
 North Fork District Ranger decisions:

The Recorder-Herald, Salmon, Idaho
 Leadore District Ranger decisions:
The Recorder-Herald, Salmon, Idaho
 Salmon District Ranger decisions:
The Recorder-Herald, Salmon, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions:
The Times News, Twin Falls, Idaho
 Burley District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit.
South Idaho Press, Burley, Idaho, for decisions issued on the Idaho portions of the Burley District.
 Twin Falls District Ranger decisions:
The Times News, Twin Falls, Idaho
 Ketchum District Ranger decisions:
Wood River Journal, Hailey, Idaho
 Sawtooth National Recreation Area:
Challis Messenger, Challis, Idaho
 Fairfield District Ranger decisions:
The Times News, Twin Falls, Idaho

Targhee National Forest

Targhee Forest Supervisor decisions:
The Post Register, Idaho Falls, Idaho
 Dubois District Ranger decisions:
The Post Register, Idaho Falls, Idaho
 Island Park District Ranger decisions:
The Post Register, Idaho Falls, Idaho
 Ashton District Ranger decisions:
The Post Register, Idaho Falls, Idaho
 Palisades District Ranger decisions:
The Post Register, Idaho Falls, Idaho
 Teton Basin District Ranger decisions:
The Post Register, Idaho Falls, Idaho

Toiyabe National Forest

Toiyabe Forest Supervisor decisions:
Reno Gazette-Journal, Reno, Nevada
 Carson District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
 Austin District Ranger decisions:
Reno Gazette-Journal, Reno, Nevada
 Bridgeport District Ranger decisions:
The Review-Herald, Mammoth Lakes, California
 Tonopah District Ranger decisions:
Tonopah Times Bonanza-Goldfield News, Tonopah, Nevada
 Las Vegas District Ranger decisions:
Las Vegas Review Journal, Las Vegas, Nevada

Uinta National Forest

Uinta Forest Supervisor decisions:
The Daily Herald, Provo, Utah
 Pleasant Grove District Ranger decisions:
The Daily Herald, Provo, Utah
 Heber District Ranger decisions:
The Daily Herald, Provo, Utah
 Spanish Fork District Ranger decisions:
The Daily Herald, Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions:

Salt Lake Tribune, Salt Lake City, Utah
 Salt Lake District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah

Kamas District Ranger decisions:
Salt Lake Tribune, Salt Lake City, Utah

Evanston District Ranger decisions:
Uintah County Herald, Evanston, Wyoming

Mountain View District Ranger decisions:
Uintah County Herald, Evanston, Wyoming

Ogden District Ranger decisions:
Ogden Standard Examiner, Ogden, Utah

Logan District Ranger decisions:
Logan Herald Journal, Logan, Utah.

Dated: March 17, 1995.

Jack A. Blackwell,

Deputy Regional Forester.

[FR Doc. 95-7820 Filed 3-29-95; 8:45 am]

BILLING CODE 3410-11-M

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on April 13 & 14, 1995 at Rock Springs Guest Ranch, 10 miles north of Bend, Oregon off Highway 20. Times are 6 to 9 p.m. April 13, and 8 a.m. to 4 p.m. April 14. Agenda items include: (1) Context of the Advisory Committee and background on the President's Forest Plan; (2) introduction of members; (3) operating guidelines and ground rules; (4) mission and purpose of the Province Advisory Committee; (5) relationship to the PIEC; and (6) Open public forum. All Deschutes Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Harry Hoogesteger, Province Liaison, USDA, Fort Rock Ranger District, 1230 N.E. 3rd, Bend, Oregon 97701, 503-383-4704.

Dated: March 21, 1995.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 95-7749 Filed 3-29-95; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-823-806]

Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT:

Ellen Grebasch, Dorothy Tomaszewski or Erik Waga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3773, (202) 482-0631 or (202) 482-0922, respectively.

Final Determination

We determine that imports of pure magnesium from Ukraine are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination on October 27, 1994 (59 FR 55420, November 7, 1994), the following events have occurred:

In December 1994, we issued sections A and C of our antidumping questionnaire¹ to exporters Greenwich Metals and Hochschild Partners. These companies provided responses to these questionnaires in December 1994 and January 1995.

Verifications were conducted at the Chicago, Illinois, facilities of MG Metals from December 6 to December 7, 1994; at Gerald Metals' Lausanne, Switzerland, offices from December 13 to December 14, 1994, and at its Stamford, Conn., offices on January 24 and January 25, 1995; at Concern Oriana's (formerly Concern Chlorvinyl) facilities in Kalush, Ukraine; and at the Greenwich, Conn., facilities of Greenwich Metals from January 30 to January 31, 1995.

On January 31, 1995, we amended our preliminary determination to correct for certain ministerial errors (60 FR 7519, February 8, 1995).

¹ Section A requested general information on each company; and section C requested information on, and a listing of, U.S. sales made during the period of investigation ("POI").

Respondents Concern Oriana, Gerald Metals, Greenwich Metals, Hochschild Partners, as well as petitioners,² filed case and rebuttal briefs. A public hearing was held on February 24, 1995.

Scope of Investigation³

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

- (1) products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);
- (2) products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and
- (3) products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to all below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium (including turnings and powder), and secondary magnesium.

² Magnesium Corporation of America; Dow Chemical; International Union of Operating Engineers, Local 564; and United Steel Workers of America, Local 8319.

³ The scope of this investigation has been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 5 in the "Interested Party Comments" section of this notice, below, for a discussion of the scope modification. For a detailed definition of alloy magnesium, see the "Scope of Investigation" section of the concurrent investigations of alloy magnesium from the People's Republic of China and the Russian Federation.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1mm. (See HTSUS, Section XV Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (*i.e.*, length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Investigation

The period of investigation ("POI") is October 1, 1993, through March 31, 1994.

Fair Value Comparisons

A. Participating Respondents

To determine whether sales of pure magnesium from Ukraine to the United States by Gerald Metals, Hochschild Partners, and MG Metals were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Verification revealed that, for its POI sales to U.S. companies, there were no instances where Greenwich Metals' role in the sales process was that of being the

first company to sell Ukraine-produced pure magnesium to a U.S. customer. That is, all subject merchandise purchased by Greenwich was done so on terms that made Greenwich the U.S. customer of its supplier. Accordingly, Greenwich will be subject to the "Ukraine-wide" deposit rate.

B. All Other Companies

All companies to which a questionnaire was issued are considered mandatory respondents in this proceeding. Several companies in Ukraine either failed to respond to either our initial requests for information about U.S. sales, or failed to respond to our request for permission to verify. These companies include: Zaporozhye Titanium-Magnesium Plant, a Ukrainian producer; and Alex, Mages, and Intreid, Ukrainian exporters. Accordingly, we have based the "Ukraine-wide" duty deposit rate—applicable to all companies except those that (1) made POI U.S. sales of subject merchandise, and (2), participated in this investigation—on the best information available ("BIA").

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to respondents that cooperated in an investigation and margins based on more adverse assumptions for those respondents, like the non-participating respondents in this investigation, which did not cooperate in an investigation. As outlined in *Coumarin*,⁴ where, as here, a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest calculated rate of any respondent in the investigation, (2) the highest margin alleged in the petition, or (3) the margin from the preliminary determination for that firm. Accordingly, we have set the Ukraine-wide deposit rate at 104.27 percent, *ad valorem*. This margin represents the highest margin in the petition, as recalculated by the Department for purposes of initiating this proceeding and as further adjusted to account for factors of production listed in the petition that were not valued at the time of initiation, but for which information is on the record upon which to base a surrogate value.

United States Price

We based USP for third-country exporters Gerald Metals and Hochschild on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the exporters to unrelated parties in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

For Gerald Metals and Hochschild, we calculated purchase price based on packed, CIF, delivered, or FOT warehouse prices to unrelated purchasers in the United States. For Gerald Metals, we made the following deductions (where appropriate): ocean freight; foreign brokerage; U.S. Brokerage and handling charges; U.S. duty; and U.S. inland freight. For Hochschild Partners, we made the following deductions (where appropriate) for foreign brokerage; ocean freight; marine insurance; and U.S. inland freight.

We based USP for MG Metals, a third-country exporter, on ESP, in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

We calculated ESP based on packed delivered prices. For MG Metals, we made the following deductions (where appropriate) for ocean freight; marine insurance; foreign brokerage; U.S. inland freight; U.S. inland insurance, U.S. duties; U.S. brokerage and handling; and additional packing costs.

From each exporter's U.S. price, we continued to deduct foreign inland freight between the factory and the reported intermediate destination (e.g., Rotterdam) using the per-ton foreign inland freight figure reported in the petition in order to account for this movement charge from producer to the intermediate destination.

Minor adjustments were made to the reported U.S. sales of these exporters pursuant to our findings at verification (see Final Calculation Memorandum, on file in room B-099 of the Main Commerce Department Building, for details of adjustments).

Foreign Market Value

A. Surrogate Country Selection

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market-economy country and that

are significant producers of comparable merchandise.

In our preliminary determination, we selected Indonesia as our primary surrogate country and resorted to Egypt for certain surrogate values where values in Indonesia were either unavailable or out of date. These countries are appropriate surrogate countries for the reasons set forth in our preliminary determination. Since we find no compelling reason to change this selection, we have continued to base FMV on the values of the appropriate factors of production as valued in Indonesia or Egypt.

B. Factors of Production

In accordance with section 773(c) of the Act, we calculated FMV, with regard to the exporters' U.S. sales of magnesium produced by Concern Oriana, based on factors of production cited in the preliminary determination, making adjustments based on verification findings (see Final Calculation Memorandum). With regard to the exporters' U.S. sales of magnesium produced by the other Ukraine manufacturer, Zaporozhye Titanium-Magnesium Plant (from which we did not receive factors of production data), we did not calculate FMV; instead, we assigned an uncooperative BIA margin which equalled the highest adjusted alleged margin cited in our initiation notice (as indicated in our amended preliminary determination).

The factors used to produce pure magnesium include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of surrogate values, see our Final Calculation Memorandum.) An imputed factory overhead figure was also included in the FMV calculation based on a percentage of materials, labor and energy. We granted a by-product offset against the cost of manufacturing (i.e., the sum of materials, labor, energy and factory overhead). We then added the statutory minimum imputed amounts for general expenses and profit. We followed the same methodology for packing costs used at the preliminary determination; however, adjusted the packing material cost so as not to double count certain materials. Additionally, we used the Indonesian unskilled labor rate for packing labor.

We have used the same surrogate values used in the preliminary determination with the exception of certain corrections made based on verification or interested party comments. Based on verification, we adjusted the values of magnesium

⁴ Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China (59 FR 66895, December 28, 1994).

chloride and chlorine to reflect the actual purity used in the production (or yielded as a by-product) of subject merchandise. We recalculated certain reported inland freight distances between factory and input supplier based on verified distances. We used labor rates from Indonesia specific to skilled and unskilled labor. One material input, considered a direct material for the preliminary determination, has not been accounted for in our final determination because it was discovered at verification to be an indirect material.

Verification

As provided in Section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: BIA for Refusal to Permit Verification

Petitioners argue that the Department should assign a margin based on total BIA to all companies that reported having made no POI sales of subject merchandise, but that did not indicate in their response to the Department's inquiry that they would permit verification of this information.

DOC Position

We agree with petitioners and have assigned a margin based on total BIA to those companies that either refused verification or did not respond to our request to verify a report of no sales.

Comment 2: Surrogate Value for Magnesium Chloride

Concern Oriana asserts that the surrogate value used for magnesium chloride in the preliminary determination was aberrational and unrealistic because: (1) The surrogate value is almost five times greater on a per-unit basis than the Brazil value of hydrated carnallite provided in the petition, of which magnesium chloride is but one cost component; (2) the UN Trade Commodity Statistics show an export value for Indonesia which is one third that of the import value; and (3) values for imports of magnesium chloride into other potential surrogate countries vary more than 500 percent, demonstrating that the value used for the preliminary determination is inherently unreliable.

Concern Oriana requests that the Department use the value of hydrated carnallite from the petition as a more

realistic and accurate surrogate for the value of magnesium chloride used in the production of magnesium.

Petitioners counter that the Department should not use a surrogate value for hydrated carnallite, a completely different material, when a nonaberrational price is available for a commodity category containing the actual materials used in the production process. Specifically, petitioners contend that the Indonesian price for magnesium chloride and the petition's price for hydrated carnallite cannot be compared. Petitioners also contend that the range of import prices for magnesium chloride from other potential surrogate countries (\$159 to \$1,000/per metric ton) demonstrates that the price used in the preliminary determination (\$152.89 per metric ton) is conservative rather than aberrational. Petitioners note as well that the Indonesian import price fits into the high preference category of the Department's hierarchy for surrogate values: it is publicly available information, it is non-export value, and it is contemporaneous to the POI, unlike the petition value for a totally different product suggested by respondents.

DOC Position

We agree with petitioners that the record does not support a finding that the surrogate value for magnesium chloride is aberrational or otherwise inappropriate. First, it is not accurate to characterize magnesium chloride as "but one cost component" of hydrated carnallite. The fact that hydrated carnallite is processed to obtain magnesium chloride (rather than vice versa) makes a higher price for magnesium chloride logical. Second, although import prices in other surrogate countries vary, Concern Oriana has not demonstrated that this variance should be construed as evidence that the value used here is unreliable. Third, we have specifically expressed a preference for import values over export values when both are available (*see PRC Pencils*⁵).

Comment 3: Basis for Greenwich Metals' Deposit Rate

Petitioners assert that verification revealed that Greenwich's reported U.S. sales of subject merchandise were entirely of merchandise that it had purchased from a European trader that was aware that the merchandise was destined for the United States. Consequently, petitioners request that

the Department assign Greenwich the "Ukraine-wide" rate and assign the European trader the BIA rate for not participating in this investigation.

Greenwich counters that it properly reported the sales in question as its own U.S. sales. Greenwich argues that the European trader did not know the ultimate destination of the merchandise because Greenwich did not inform the European trader where to ship the merchandise until after the terms of sale were fixed. Greenwich also argues that the European trader did not know the ultimate destination of subject merchandise at the time the terms of the sale were fixed because Greenwich bought the merchandise on a "duty-unpaid" basis—leaving Greenwich the option of selling the merchandise in either the U.S. market or in a third country.

DOC Position

We agree with petitioners. First, the record does not support Greenwich's claim that it did not inform the European trader where to ship the merchandise until after the terms of sale were fixed. Rather, as verification revealed, the contract setting the terms of sale included as identification of the shipment destination. Second, the fact that sales terms are "duty unpaid" is far outweighed by the fact that the merchandise was shipped to the United States and the absence of any indication that the seller could legitimately expect such sales not to enter the U.S. market. Accordingly, we have not calculated a company-specific margin for Greenwich because we find that it did not make any U.S. sales of the subject merchandise during the POI. Instead, Greenwich and its European supplier will both be subject to the "Ukraine-wide" rate.

Comment 4: Completeness of Ukraine Magnesium Industry's Response

Petitioners argue that, as state owned entities, Zaporozhye and Concern Oriana comprise the consolidated magnesium industry in Ukraine. According to petitioners, total BIA should be assigned to this consolidated Ukrainian industry because the industry as a whole failed to report complete sales information (*i.e.*, Zaporozhye did not provide a complete response to the questionnaire). They also claim that total BIA should also be assigned to third-country exporters because of the Ukrainian industry's non-cooperation.

If the Department elects not to apply total BIA to all third-country exporters in this proceeding, then petitioners contend that the Department should base FMV for the exporters' U.S. sales (1) wholly on BIA, disregarding Concern

⁵ Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China (60 FR 55625, November 8, 1994)

Oriana's factors of production, or (2) on a simple average of Concern Oriana's calculated FMV and a BIA-based FMV for Zaporozhye, or that the Department should link individual exporters' applicable deposit rate to the specific producer which supplies subject merchandise.

Gerald Metals counters that Concern Oriana's magnesium production process is similar to that of Zaporozhye and, therefore, the Department should use only verified information from Concern Oriana to calculate FMV in its LTFV analyses.

DOC Position

If an antidumping duty order is issued in this proceeding, any direct sales from Ukraine will be subject to a deposit rate based on total BIA. (See discussion of "All Other Companies" in the "Fair Value Comparisons" section of this notice, above).

As to the third-country exporters, we have continued to follow the approach set out in the preliminary determination. We have based FMV for those companies' reported U.S. sales of Concern-Oriana-produced merchandise on Concern Oriana's factors of production; we have not calculated FMV for reported sales of Zaporozhye-produced merchandise, but instead have assigned an uncooperative BIA margin. This approach is consistent with the approach that we have taken in other NME cases, such as *Coumarin*, *Pencils*, and *PRC Sulfur Dyes*⁶, where the Department based FMV for an exporter not controlled by the central government only on the factors of production of the producer or producers which supplied subject merchandise to that exporter. Under this approach, individual transaction margins are then weight averaged to arrive at a single, exporter-specific deposit rate. Further, in a situation like that created here by Zaporozhye's failure to respond, where FMV information needed to calculate a margin is not available, the Department has, as here, resorted to partial BIA and plugged into the weighted-average calculations BIA margins for individual transactions. (See, *e.t.*, *Pencils*.)

Comment 5: Scope

Petitioners contend that the Department should clarify the scope in this proceeding. Petitioners argue that "off-specification" pure magnesium (*i.e.*, magnesium that is less than 99.8% pure magnesium but that otherwise can be and is considered pure magnesium

by consumers) should be considered as within the scope. Petitioners propose a revised scope to achieve this end.

Greenwich argues that the proposed revised scope is flawed because it appears to include secondary magnesium (*i.e.*, magnesium that has been remelted and recast) as subject merchandise.

DOC Position

We agree with petitioners that some magnesium is produced which, despite not meeting the normal definition (based on magnesium content) of pure magnesium, nevertheless may be used in applications that normally require pure magnesium. In fact, the records in the concurrent antidumping investigations of pure and alloy magnesium from the People's Republic of China show sales of such magnesium were supplied to fulfill an order for pure magnesium.

We therefore have revised the scope to include this off-specification pure magnesium within the definition of pure magnesium. Off-specification pure magnesium is described as any product (1) that is 50 percent or more primary magnesium, and (2) that does not meet any ASTM definition of alloy magnesium (based on specific percentages of one or more alloying agents).

We note that our consultations with the Bureau of Mines established that the industry standards for alloy magnesium are ASTM standards. (See Final Calculation Memorandum). Consequently, we have not adopted scope language proposed by petitioners that refers to alloy magnesium defined by "other industry standards" in illustrating products that are not off-specification pure magnesium. Although ASTM standards define pure magnesium as not less than 99.8 percent magnesium, we believe that metal with a primary magnesium content below that level should be captured in the scope if it cannot legitimately be defined as a specific ASTM alloy magnesium.

The fact that the scope encompasses only merchandise with primary magnesium content of 50 percent or greater means that merchandise composed of 50 percent or more secondary magnesium is excluded.

Comment 6: By-Product Offset Methodology

Petitioners contend that the Department's decision to permit an offset to material surrogate values to account for the chlorine by-product of the magnesium production process was erroneous for the following reasons: (1)

the producers were unable to demonstrate for the record that any economic benefit accrued to the firm and that such benefit was linked to the production of the subject merchandise; (2) the surrogate value used was incorrect in that it did not correspond to the actual purity level of the by-product produced and was not calculated net of transportation and processing costs; and (3) any adjustment determined to be appropriate should have been made to the cost of manufacture rather than cost of materials so as not to understate factory overhead, general expenses, and profit.

Concern Oriana argues that the cost of manufacturing magnesium should be reduced by the value of chlorine by-product.

DOC Position

We agree with petitioners in part. First, because the by-product results from the production process and is either used by the magnesium producer or sold for use by some other company in the NME country, it is a factor whose value must be taken into account in our calculation of the fair value against which to test U.S. prices. Second, we have adjusted the by-product's surrogate CIF import value to reflect concentration differences. However, no adjustment to value for transportation costs is appropriate; for by-products, as for material factors of production consumed in the production process, we consider the import values used to be surrogates for ex-factory, freight-exclusive prices from suppliers to consumers. Third, we agree with petitioners that the proper adjustment is a reduction in the cost of manufacture. This adjustment increases overhead amount commensurately with the value of the by-product, thereby eliminating the need for valuing any additional processing-related elements. Additionally, an adjustment to cost of manufacture is consistent with Department practice in other NME investigations (see, *e.g.*, *Coumarin*).

Comment 7: Surrogate General Expenses and Profit

Petitioners argue that an amount should be included in FMV calculations in order to reflect general expenses incurred and profit realized by each reseller involved in the sales process. Petitioners argue that, because the responding resellers failed to provide their selling expenses (despite a Departmental request to do so in the questionnaire), the Department should add an amount based on financial statements submitted by resellers.

⁶ Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the People's Republic of China (58 FR 7543, February 8, 1993)

Greenwich, Hochschild, and Gerald Metals, assert that petitioners have provided no convincing rebuttal to the Department's recent rejection of such a request in *Coumarin*, and note that the questionnaires they received did not contain section D, the section dealing with general expenses.

DOC Response

We agree with respondents that an addition to FMV of actual reseller general expenses and profit would be inappropriate. Given that Ukraine is an NME and the Ukrainian magnesium industry has not been found to be market oriented, section 773(c) of the Act requires that the Department measure U.S. prices against the factors of production (materials, labor, energy, and overhead) used in producing the merchandise, valued in an appropriate surrogate country, plus general expenses, profit and containers. The Act's only specific guidance as to the valuation of general expenses, profit and containers is to establish minima for the first two. Our regulations, meanwhile, instruct us to "include in this calculation of constructed value an amount for general expenses and profit, as required by section 773(e)(1)(B) of the Act. (19 CFR 353.52(c)) The Department has not interpreted the Act and the regulations as requiring use of actual expenses and profit for these FMV components when FMV is based on factors of production; the Department has also explicitly rejected such adjustments in prior NME proceedings (see, e.g., *Coumarin* and *Sparklers*⁷). Moreover, to do so simply does not make sense because it amounts to a comparison of apples and oranges. In NME proceedings, the FMV is normally based completely on factors valued in a surrogate country (without regard to, for example, actual selling expenses) on the premise that the actual experience cannot be meaningfully considered. Were the question simply one of "traditional" dumping by trading companies, the market-economy price-to-price or price-to-CV methodology would appropriately be employed; actual selling expenses would have been accounted for on both U.S. prices and foreign market prices (or, if appropriate, constructed value, in which case other general expenses and profit would also have been taken into account). Accordingly, we have continued to value general expenses and profit by simply applying to the surrogate-based cost of manufacture the greater of either

appropriate surrogate percentages or the statutory minima.

Command 8: Surrogate Value of Labor

Petitioners challenge the Department's use of an unskilled labor value in the preliminary determination to account for both skilled and unskilled labor. Petitioners assert that, if the Department cannot locate specific skilled and unskilled labor values from the chosen surrogate countries, the Department should employ labor rates from the petition as BIA.

DOC Position

We have obtained and used Indonesian wage data for 1992 for skilled and unskilled labor (see *PRC Lighters*⁸). Because Indonesia is our primary surrogate country, we do not need to address the question of an appropriate alternative source of values for these factors.

Comment 9: Unreported Material.

Petitions assert that the Department should include in Concern Oriana's FMV the value for a material which was not included in the preliminary determination. In its questionnaire response, Concern Oriana did not provide usage information for this material, claiming that its value was not significant. Petitioners contend that the value in Ukraine is not relevant since the input would be valued in a surrogate country. Therefore, as BIA, petitioners advocate use of an average of all other direct input values as the value for this input.

DOC Position

We disagree. Verification confirmed that this factor was properly omitted since it was a waste product of the magnesium production process for which only a very small fraction was recycled into the production process. Therefore, it is appropriate not to value this input in the FMV calculation.

Comment 10: Concentration/Purity Levels of Material Inputs

Petitioners contend that appropriate adjustments should be made for differences in concentration or purity between surrogate values on the one hand and materials used in production on the other hand. However, petitioners also argue that the Department should not assume that surrogate values represent 100 percent concentration and therefore should make no adjustment

where the concentration applicable to a surrogate value cannot be determined.

DOC Position

Where we have been able to determine the purity or concentration applicable to a surrogate value, we have adjusted for differences, if any, between the surrogate and the actual material. Otherwise, we have attempted no adjustment for purity or concentration.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of pure magnesium from Ukraine that are entered, or withdrawn from warehouse, for consumption on or after November 7, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

Consistent with our practice in investigations involving imports from NME countries, we have calculated a single, "Ukraine-wide" deposit rate applicable to all exporters in Ukraine, as well as any exporters in third countries that have not been assigned a company-specific margin. As is discussed under "All Other Companies" in the "Fair Value Comparisons" section of this notice, the record in this investigation indicates that Ukraine exporters of magnesium may not have responded to our questionnaire; therefore, the "Ukraine-wide" deposit rate has been calculated based on total BIA.

The weighted-average dumping margins are as follows:

Manufacturer/producer exporter	Weighted-average margin percentage
Gerald Metals	103.27
MG Metals	79.87
Hochschild Partners	92.21
Ukraine-Wide Rate	104.27

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will within 45 days determine whether imports the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist,

⁷ Final Determination of Sales at Less Than Fair Value: *Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991)

⁸ Preliminary Determination of Sales at Less Than Fair Value: *Disposable Pocket Lighters from the People's Republic of China* (59 FR 64191, December 13, 1994)

the investigation will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on all after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: March 22, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95-7775 Filed 3-29-95; 8:45 am]

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[A-570-832 and A-570-833]

Notice of Final Determinations of sales at Less Than Fair Value: Pure Magnesium and Alloy Magnesium From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 30, 1995.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Louis Apple, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482-4136 or (202) 482-1769, respectively.

Final Determinations

The Department of Commerce (the Department) determines that pure magnesium and alloy magnesium from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the Department announced its preliminary determinations on October 27, 1994, (59 FR 55424, November 7, 1994) the following events have occurred:

On October 19, 1994, Min He Magnesium (Min He), a producer and exporter of the subject merchandise, and Xiamen Xing Xia Co. Ltd (Xing Xia), an exporter of the subject merchandise, requested that we postpone our final determinations by 60 days pursuant to 19 CFR 353.20(b)(1). On November 7,

1994, we published a notice postponing the final determinations (59 FR 55424).

In January, 1995, we conducted verification of the questionnaire responses at Min He and Xing Xia. On February 10, 1995, petitioner filed a case brief. On February 17, 1995, respondents filed a rebuttal brief and petitioner withdrew its request for a public hearing.

Scopes of Investigations

The scopes of these investigations have been modified since the preliminary determination in order to clarify the distinctions between pure magnesium and alloy magnesium. See Comment 1 in the "Interested Party Comments" section of this notice, below.

A. Pure Magnesium

The product covered by this investigation is pure primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure primary magnesium is used as an input in producing magnesium alloy.

Pure primary magnesium encompasses:

- (1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra-pure" magnesium);
- (2) Products containing less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and
- (3) Products (generally referred to as "off-specification pure" magnesium) that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium.

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this investigation are alloy primary magnesium, primary magnesium anodes, granular primary magnesium

(including turnings and powder), and secondary magnesium.

Granular magnesium, turnings, and powder are classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8104.30.00. Magnesium granules and turnings (also referred to as chips) are produced by grinding and/or crushing primary magnesium and thus have the same chemistry as primary magnesium. Although not susceptible to precise measurement because of their irregular shapes, turnings or chips are typically produced in coarse shapes and have a maximum length of less than 1 inch. Although sometimes produced in larger sizes, granules are more regularly shaped than turnings or chips, and have a typical size of 2mm in diameter or smaller.

Powders are also produced from grinding and/or crushing primary magnesium and have the same chemistry as primary magnesium, but are even smaller than granules or turnings. Powders are defined by the Section Notes to Section XV, the section of the HTSUS in which subheading 8104.30.00 appears, as products of which 90 percent or more by weight will pass through a sieve having a mesh aperture of 1 mm. (See HTSUS, Section XV, Base Metals and Articles of Base Metals, Note 6(b).) Accordingly, the exclusion of magnesium turnings, granules and powder from the scope includes products having a maximum physical dimension (i.e., length or diameter) of 1 inch or less.

The products subject to this investigation are classifiable under subheadings 8104.11.00, 8104.19.00 and 8104.20.00 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

B. Alloy Magnesium

The product covered by this investigation is alloy primary magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this investigation. Primary magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal.

Alloy magnesium products are produced by adding alloying elements to pure magnesium in order to alter the mechanical and physical properties of the magnesium to make it suitable for use as a structural material. Alloy magnesium is used primarily for casting or in wrought form. It is harder and